IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No 10927 of 1998
with
CIVIL APPLICATION NO 6618 OF 2003

For Approval and Signature:

HON'BLE MR.JUSTICE H.K.RATHOD

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1. Whether Reporters of Local Papers may be allowed to see the judgements? : NO

2. To be referred to the Reporter or not? : NO

3. Whether Their Lordships wish to see the fair copy of the judgement? : NO

4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? : NO

5. Whether it is to be circulated to the concerned Magistrate/Magistrates,Judge/Judges,Tribunal/Tribunals? : NO

VRAJLAL P DHORAJIA

Versus

STATE OF GUJARAT

Appearance:
1. Special Civil Application No. 10927 of 1998
(MR PB MAJMUDAR) for Petitioner No. 1-4
MR NK MAJMUDAR for Petitioner No. 1-4
Mr. KL Pandya AGP for Respondent No. 1-2
MR HARIN P RAVAL for Respondent No. 3-4

CORAM : HON'BLE MR.JUSTICE H.K.RATHOD

Date of decision: 19/09/2003

ORAL JUDGEMENT

Today, Civil Application NO. 6618 of 2003 was notified before this court for fixing the main matter for final hearing. Heard learned advocate Mr. NK Majmudar for the petitioners and Mr. KL Pandya, learned AGP is appearing for respondents no.1/2. Nobody is appearing for respondents no.3/4. With consent of the learned advocates for the parties, main matter has been taken up for final hearing. In the main matter, affidavit in reply has been filed by respondents no.3/4 and no reply has been filed by respondents no.1/2.

The facts of the present petition are to the effect that the petitioners are the employees of the respondent no. 3 Prakash School for Mentally Retarded Children. Petitioners are working on different posts in the respondent no.3 school. Petitioner no.1 was appointed in the year 1985; Petitioner NO. 2 and 3 were appointed in the year 1983 and petitioner no. 4 was appointed in the year 1980 and they are discharging their duties sincerely and satisfactorily. According to the petitioners, said institution is receiving 100 per cent grant from the Government and all the Rules and Regulations of the Government are applicable to the employees of the respondent no.3 school. According to the petitioners, salary of the staff of the said institution is being paid directly by the Government and the Director of Social Welfare is having complete control over the said institution. It is their grievance that the higher grade available to the employees after completion of nine years' service has not been given to them as per the GR dated 5th July, 1991. It is their case that all the teaching staff of respondent no.3 have been given such benefits from the date on which they completed nine years service but such benefit has not been given to them and, therefore, present petition has been filed by the petitioners.

In this matter, on behalf of respondents no.3/4, affidavit in reply has been filed and no affidavit in reply has been filed on behalf of respondents no.1/2 . However, when the main matter was taken up for consideration, learned AGP Mr. Pandya has shown parawise remarks received by him from the department concerned. I have perused the reply filed on behalf of respondents no.3/4 and the parawise remarks given by the concerned department to the office of the GP which has been shown to this court by the learned AGP Mr. Pandya.

As per the reply given by the respondents no.3/4, the main contention raised by them is to the effect that

the work of the petitioners was not found satisfactory and some of the petitioners have received charge sheet and some of them have also been placed under suspension and, therefore, considering such record of the petitioner, the petitioners are not entitled for the benefit of higher grade as per the GR dated 5th July, 1991 and 6th August, 1994. According to the respondents no.3/4, the case of the petitioner was put up before the authorities of the State Government for consideration but on 1st April, 1999, request and proposal made by the respondents no.3 and 4 was rejected by the authorities of respondent no.1 and 2 because of the unsatisfactory work of the petitioners and, therefore, the petitioners are not entitled for such benefit as per item no.3(9) of the GR dated 16th August, 1994. I have minutely perused the affidavit in reply filed by respondents no.3/4 and the documents attached to the affidavit in reply. Petitioner no.1 is the cook; petitioner no.2 is attendant; no.3 is sweeper and no.4 is the Manager. The allegations which have been mentioned in the show cause notice are minor in nature and none of the allegations are serious. Considering the parawise remarks shown to this court by the learned AGP Mr. Pandya, according to the respondents no.1/2, as per GR dated 5th July, 1991, the committee which has been constituted is required to examine the service record for the last five years of the employee concerned and if such record is found to be satisfactory, the benefit of such higher grade could be extended in favour of such an employee. According to respondents no.1/2, pursuant to the proposal made by respondent no.3, District social Welfare Officer has not scrutinized the claim of the petitioners and it is also made clear that if the petitioners are satisfactorily complying with the conditions incorporated in GR dated 16th August, 1994, then, after scrutinizing their service record, benefit of higher grade could be given provided they are satisfactorily complying with the conditions incorporated in the GR dated 16.8.1994 and their service record for the last five years is satisfactory.

Considering the submissions made by the earned advocates for the parties and also considering the reply of respondent no.3/4 and the parawise remarks submitted by respondents no.1/2 in this matter, it would be just and proper to issue some suitable directions to the respondents no. 1/2 for reconsideration of the matter of the petitioners under GR dated 5.7.1991 and 16.8.1994 and to examine the same and after examining last five years record, if it is found that the petitioners are complying with the conditions incorporated in the said resolutions, then to grant benefit of higher grade to each

petitioners.

Therefore, without entering into the merits of the matter, order dated 1st April, 1999 passed by the Director of Social Welfare is hereby quashed and set aside and respondents no. 1 and 2 are hereby directed to reconsider the matter by examining the service record of the petitioners while keeping in view the fact that whatever allegations made whether they are serious or not, and then to pass appropriate orders in accordance with GR dated 16.8.1994 and 5.7.1991 and if it is found ultimately that the petitioners are entitled for higher grade benefit, then, same may be given to the petitioners from the date of their entitlement for such benefit with all arrears for the intervening period. Such an exercise is required to be completed by the said respondents no. 1 and 2 within three months from the date of receipt of copy of this order and to pass appropriate order in accordance with law and to communicate the same to the petitioners. Rule is made absolute accordingly with no order as to costs.

In view of this order passed by this Court in the main matter, civil application no. 6618 of 2003 for fixing the main matter for final hearing shall not survive. Same is, therefore, disposed of with no order as to costs.

Dt.19.9.2003. (H.K. Rathod,J.)
Vyas